

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 23365
Of LYRA N. HOWARD to Appropriate
from Indian Creek in Siskiyou County

Decision 1375

DECISION APPROVING APPLICATION IN PART

Lyra N. Howard having filed Application 23365 for a permit to appropriate unappropriated water; protests having been received; the applicant and protestants having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulation; the Board, having considered all available information, finds as follows:

Substance of the Application

1. Application 23365 is for a permit to appropriate 0.5 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year for irrigation, domestic, stockwatering, and recreational purposes from Indian Creek in Siskiyou County. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 11, T44N, R9W, MDB&M.

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Applicant's Project

2. The applicant proposes to divert from Indian Creek approximately five miles upstream from its confluence with the Scott River for the irrigation of 40 acres of orchard, pasture, and general crops, stockwatering, and use at a campground. As the maximum irrigable area is between four and five acres, the applicant's total requirements should not exceed 0.1 cfs or 32 acre-feet per annum. Any permit issued on Application 23365 should be limited to those quantities. A permit so limited is acceptable to the applicant (applicant's letter of August 1, 1970; files on Application 23365).

Protestants

3. Protestant Chester G. Stark proposes to divert from Indian Creek sometime in the future approximately three-quarters of a mile downstream from the applicant's point of diversion under claim of riparian right.

Protestants Lynn J. and Sharon M. Alexander pump from the underflow of the creek approximately one mile downstream from the applicant's point of diversion for the irrigation of two acres of garden and orchard under claim of riparian right.

Protestant Orlyn Hoellwarth diverts from the creek approximately 2-1/2 miles downstream from applicant's point of diversion for stockwatering and the irrigation of approximately 120 acres of pasture and alfalfa under claim of pre-1914 appropriative right.

Protestant Roy E. Mason diverts from the creek just below the protestant Hoellwarth for stockwatering and the irrigation of approximately 200 acres of pasture and alfalfa under claim of pre-1914 appropriative right.

Water Supply

4. On July 28, 1970, the date of the field investigation of Application 23365, the flow in Indian Creek was 300 gallons per minute (gpm) at the applicant's proposed point of diversion; 120 gpm at protestant Stark's point of diversion; and 25 gpm at protestants Alexanders' point of diversion. There was no flow at protestants Mason and Hoellwarth's points of diversion. The creek disappeared in dredge tailings approximately 1/4 mile below protestants Alexanders' point of diversion.

5. Water ordinarily does not reach protestants Mason and Hoellwarth after about the first of June until the rains begin in the fall. During the remainder of the year there is water surplus to the needs of protestants and other users from the creek.

Disposition of Protests

6. The Department of Fish and Game filed a protest to protect rainbow trout and steelhead in Indian Creek. The Department and the applicant have since entered into an agreement whereby the Department's protest can be dismissed if any permit issued pursuant to Application 23365 contains a term requiring the bypass of a minimum flow of 0.5 cfs, or the natural flow of the stream whenever

it is less than 0.5 cfs, at the point of diversion for the maintenance of fish life.

Any permit issued on Application 23365 should contain such a term along with a statement that it is included as the result of a bilateral agreement between the permittee and the Department of Fish and Game and that it shall not be construed as a finding by the Board that the amount of water is either adequate or required for the maintenance of fish life.

7. As protestants Alexander pump from the underflow of the creek by a pump which has a capacity of only 2-1/4 gpm, the approximately 225 gpm that will be bypassed for fish life should adequately maintain the underflow at the Alexanders' pump. Surface flow in the creek is not necessary to satisfy their claimed rights and approval of Application 23365 will not result in harm to them.

Protestant Stark's plan to use water in the future cannot bar present use by the applicant and therefore his protest must be disregarded.

Approval of Application 23365 will not harm protestants Mason and Hoellwarth for the reasons stated in paragraph 5.

Availability of Unappropriated Water

8. Unappropriated water is available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 23365 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the order following.

The records, documents, and other data relied upon in determining the matter are: Application 23365 and all relevant information on file therewith, particularly the report of field investigation made on July 28, 1970.

ORDER

IT IS HEREBY ORDERED that Application 23365 be, and it is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.1 cubic foot per second by direct diversion to be diverted from May 1 to October 1 for irrigation purposes and throughout the year as required for stockwatering, domestic and recreational purposes.

The equivalent of the continuous flow allowance by direct diversion for any 30-day period may be diverted in a shorter time if there be no interference with vested rights. The maximum amount diverted under this permit shall not exceed 32 acre-feet per year.

2. The maximum quantity herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before nine months from date of permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1973.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1974.

6. Progress reports shall be filed promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

8. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph

unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

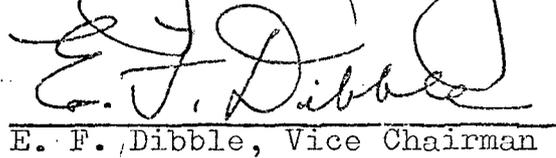
10. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

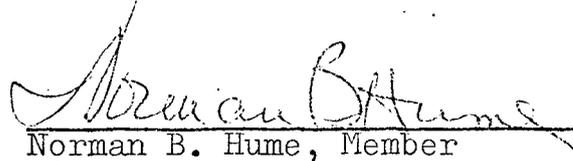
11. Permittee shall at all times bypass a minimum of 0.5 cubic foot per second, or the flow of the stream whenever it is less than 0.5 cubic foot per second, at the point of diversion to maintain fish life. The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish life.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Los Angeles, California.

Dated: May 20, 1971


Kerry W. Mulligan, Chairman


E. F. Dibble, Vice Chairman


Norman B. Hume, Member

ABSENT

Ronald B. Robie, Member


W. W. Adams, Member